

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
STATE CHARTER SCHOOL APPEAL BOARD**

<b>Provident Charter School for Children With Dyslexia,</b>	:	
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	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>CAB Docket No. 2014-06</b>
	:	
<b>Pittsburgh Public School District,</b>	:	
	:	
	:	
<b>Respondent.</b>	:	

**OPINION**

**HISTORY**

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. §17-1701-A *et seq.* (hereinafter “CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on the appeal by Provident Charter School for Children with Dyslexia (hereinafter “Provident” or “School”) from the decision of the Board of School Directors of the Pittsburgh Public Schools (hereinafter “the District Board”) to deny its resubmitted application for a charter.

On November 15, 2013, Provident submitted to the District Board its initial application to establish a charter school on the North Side of Pittsburgh within the Pittsburgh Public School District (hereinafter “District” or “Pittsburgh”) to serve students with dyslexia in grades two through eight (hereinafter “the Original Application”). R. 1-344, 345-517.<sup>1</sup> After a December 16, 2013 public hearing (R. 518-584) the Original Application was denied by the District Board

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<sup>1</sup> “R. \_\_\_” refers to the Record before the District Board which was filed with the Hearing Officer on October 17, 2014 by Provident rather than the District, pursuant to an agreement between counsel for Provident and the District. *See* Cover Letter dated October 17, 2014. The number following “R.” refers to the bate-stamped page number of the document.

on February 26, 2014 (R. 625-635). The initial denial was based upon deficiencies found in the following areas: sustainable support, expanded educational choices, assessment system for students, procedures regarding suspension or expulsion of pupils, proposed professional development plan, community group involvement in school planning process, meeting the needs of students with disabilities, no plans for addressing English Language Learners, admissions policy, procedure for reviewing complaints of parents, curriculum, extracurricular activities, financial viability, and facility location. R. 625-635.

As permitted by Section 1717-A(f) of the CSL, 24 P.S. §17-1717-A(f), Provident chose to revise and resubmit its application on March 14, 2014 (hereinafter “the Revised Application”). R. 636-1722. After a public hearing on April 28, 2014, (R. 1723-1754) the District Board denied the Revised Application on April 30, 2014. R. 1761-1765. The District Board based its denial on deficiencies that were found in the following areas: sustainable support from residents within the District, expanded choices, procedures regarding suspension or expulsion of pupils, proposed professional development plan, community group involvement in school planning process, meeting the needs of all students, admissions policy, curriculum, and extracurricular activities. R. 1761-1765.

Upon receipt of the District Board’s denial, Provident commenced the signature petition process. On August 22, 2014, the Court of Common Pleas of Allegheny County issued an order that Provident had established the sufficiency of the petition so that it could proceed with its appeal. R. 1766. On August 28, 2014, Provident filed the instant appeal with CAB.

The parties have timely filed briefs and other documents in support of their respective positions on appeal. They presented their arguments to CAB on December 9, 2014.

For the reasons set forth below, CAB finds that the charter application of Provident Charter School met the requirements of the Charter School Law and thus the District Board erroneously denied the application.

### **FINDINGS OF FACT**

#### **A. Procedural History**

1. Provident Charter School for Children with Dyslexia is a Pennsylvania nonprofit corporation which applied for a charter to operate within the Pittsburgh Public School District, Allegheny County, Pennsylvania. Joint Stipulation ¶ 1.<sup>2</sup>
2. Pittsburgh Public Schools is a public school district organized and existing under the Public School Code, 24 P.S. §§1-101, *et seq.*, having its administrative office at 341 South Bellefield Avenue, Pittsburgh, Pennsylvania 15213. Joint Stipulation ¶ 2.
3. Pursuant to the CSL, Provident submitted an application and binder of evidence in support of its application to the District Board on November 15, 2013 to establish a charter school within the District (the “Original Application”). R. 1-517.<sup>3</sup> Joint Stipulation ¶ 3.
4. On December 16, 2013, the District Board held a public hearing on Provident’s charter request. R. 518-584.<sup>4</sup> Joint Stipulation ¶ 4.

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<sup>2</sup> “Joint Stipulation” refers to the Joint Stipulation of Undisputed Facts and Law filed by the parties through their respective counsel on November 20, 2014.

<sup>3</sup> The documents referenced in the Record include the Original Application (R. 1-344) and Provident’s Evidence of Support (R. 345-517).

<sup>4</sup> The documents referenced in the Record include a list of speakers for the December 16, 2013 public hearing (R. 518-522); written statements from members of the public (R. 523-562); and a transcript of the public hearing (R. 562-584).

5. On February 26, 2014, the District Board denied the Original Application and sent a letter to Provident outlining the reasons and basis for its denial. R. 625-635. Joint Stipulation ¶ 5.
6. The District Board's Denial of the Original Application was based, *inter alia*, upon the following deficiencies:
  - a. failure to demonstrate sustainable support from the community surrounding the proposed location and to establish that the letters and signatures of support were applicable to the current application;
  - b. failure to provide expanded educational choices, with the School Board asserting that the proposed programming is currently used within the District, and that the charter school would be a full-time special education placement which would prevent the students from interacting with their nondisabled peers;
  - c. failure to include all information requested in section 1719-A and conforming to the legislative intent outlined in section 1702-A, specifically, failure to include a specific assessment system for students, the procedures which would be used regarding suspension or expulsion of pupils, a sufficient proposed professional development plan, any information on how community partnerships would be integrated into the school, a nondiscriminatory admissions policy since admission to the school requires measures of achievement/aptitude and would discriminate on the basis of intellectual ability and/or disability, a procedure for reviewing complaints of parents, a curriculum that is aligned to state standards, information of extracurricular activities for its students, and how it will comply with the nonsectarian regulations required at the proposed facility location;
  - d. failure to provide sufficient information regarding continuum of services to meet the needs of all students, including students with disabilities, English Language Learners, and at-risk students;
  - e. failure to establish the School's financial viability; and
  - f. failure to demonstrate that Provident can serve as a model for other schools in the District.

R. 625-635.

7. On March 14, 2014, pursuant to Section 1717-A(f) of the CSL, 24 P.S. §17-1717-A(f), Provident resubmitted a Revised Application for a Charter to the District which amended and supplemented its Original Application. R. 636-1722. Joint Stipulation ¶ 6.
8. The Revised Application amended or supplemented, *inter alia*, the sections in the Revised Application regarding: (i) evidence of sufficient sustainable support; (ii) evidence demonstrating that Provident will provide students of the District with expanded choices; (iii) its procedures for suspension or expulsion of pupils; (iv) its proposed professional development plan; (v) its admissions policy; and (vi) information regarding its proposed curriculum. R. 927-1721. Joint Stipulation ¶ 7.
9. On April 28, 2014, the District held a second public hearing. R. 1723-1748. Joint Stipulation ¶ 8.<sup>5</sup>
10. On April 30, 2014, the District denied the Revised Application. R. 1761-1765. Joint Stipulation ¶ 9.
11. On May 1, 2014, a letter was sent to Provident outlining the reasons and basis for the denial. R. 1761-1765.
12. The District Board's denial of the Revised Application was based upon the following:
  - a. Provident did not demonstrate sufficient sustainable support from residents within the District with most signatures on petitions and letters of support being from persons outside the City of Pittsburgh School District;
  - b. Provident does not provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system;

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<sup>5</sup> The documents referenced in the Record include a list of speakers for the April 28, 2014 public hearing (R. 1723-1724); written statements from members of the public (R. 1725-1733); and a transcript of the public hearing (R. 1734-1748).

- c. Provident fails to set forth procedures regarding suspension or expulsion of pupils sufficient to comply with section 1318<sup>6</sup>;
- d. Provident's proposed professional development plan is insufficient<sup>7</sup>;
- e. Provident fails to include sufficient information on the manner in which community groups will be involved in the charter school;
- f. Provident failed to demonstrate that it is prepared to meet the needs of all students;
- g. Provident's admissions policy is discriminatory and subjective in violation of 24 P.S. §17-1723-A(b)(1), 22 Pa. Code §711.7, and the Pennsylvania Fair Educational Opportunities Act;
- h. The curriculum included with the Revised Application is insufficient; and
- i. Provident's information regarding plans or agreements for extracurricular activities are insufficient.

R. 1761-1765.<sup>8</sup>

13. Pursuant to Section 1717-A(h)(2) of the CSL, 24 P.S. §17-1717-A(h)(2), Provident obtained signed petitions within 60 days after April 30, 2014 and filed the same with its Petition to Appeal in the Court of Common Pleas of Allegheny County. Joint Stipulation ¶ 10.

14. On August 22, 2014, the Court of Common Pleas of Allegheny County entered a Consent Order that Provident had "submitted a petition with sufficient (over 1,000) valid signatures such that it may proceed to file its appeal with the Pennsylvania Charter Appeal Board." R. 1766. Joint Stipulation ¶ 11.

<sup>6</sup> Section 1318 of the Public School Code, 24 P.S. § 13-1318, generally authorizes school officials to discipline students for misbehavior at school.

<sup>7</sup> In its Brief, the District concedes that the proposed professional development plan submitted in the Revised Application is sufficient and no longer seeks to use section 17-1719-A(13) as a basis for denial of the Revised Application. *See* Brief of School District, pp. 15-16. Therefore, there will be no further discussion of the professional development plan.

<sup>8</sup> The May 1, 2014 Denial Letter cover page includes a statement that the Revised Application was found to be deficient in its "[f]ailure to serve as a model for other schools in the District." R. 1761. However, in the description of deficiencies that follow the cover letter, there is no discussion of this alleged deficiency. *See* R. 1762-1765.

15. On August 28, 2014, pursuant to Section 1717-A(i) of the CSL, 24 P.S. §17-1717-A(i), Provident filed the instant appeal with CAB.
16. On September 18, 2013, a hearing officer was appointed to address any procedural issues raised in the case and to prepare the case for argument before CAB. Official Notice-CAB Docket No. 2014-06.
17. Following receipt of the record the hearing officer held a telephonic pre-hearing conference with counsel and on November 3, 2014 issued an Order permitting the parties to file motions to supplement the record and setting deadlines for briefs. Official Notice-CAB Docket No. 2014-06.
18. Thereafter, briefs on the merits of the appeal and a Joint Stipulation of Undisputed Facts and Law were timely filed by the parties. Official Notice-CAB Docket No. 2014-06.
19. Provident also filed a Supplement to the Record Regarding Additional Support (*see* R. 1767) to which the School District did not object. Official Notice-CAB Docket No. 2014-06.

**B. Revised Application**

20. According to the Revised Application, Provident intends to serve students in grades 2 through 8. R. 642, 651,719.
21. During its first year of operation, Provident intends to enroll 96 students in grades 3 and 4, adding one more grade and 48 students each year until it reaches grades 2 through 8, with a total enrollment of 336 students by its sixth year. R. 642, 651, 719.
22. Provident will be located in the former North Catholic High School facility on the North Side (Troy Hill neighborhood) of the City of Pittsburgh. R. 642, 887-896.

23. Provident has provided a description of and an address of the physical facility, as well as information regarding the ownership thereof. R. 865-896.
24. Provident acknowledges that it must remove or cover any religious symbols contained in the former North Catholic High School facility. R. 1702.
25. Provident has filed a financial plan for the school and information regarding the budgeting and operations of the School. R. 861-864, 900-903.
26. The Revised Application states that Provident's purpose is "to offer families an alternative educational program for their children who are diagnosed with dyslexia and are at-risk of educational failure due to academic difficulties manifested through limited language processing skills and whose instructional needs are not met in a traditional setting." R. 647-648.
27. The Revised Application states that Provident's target audience is "students in Levels 2 through 8 who have a medical diagnosis of dyslexia." R. 648.
28. The Revised Application states that the mission of Provident "is to help children with dyslexia access their potential by providing a high-quality, well-rounded education which is delivered through multisensory instructional methods and individual learning plans." R. 644, 650.
29. The overarching vision for Provident is "to ensure specifically designed instruction for students with dyslexia that will intensively and specifically address their individual needs at their own instructional level." R. 644.
30. Provident's implemented instructional methods, assessments and interventions are designed toward the goal that upon graduating from Grade 8 students will have a toolkit



of practical strategies, methods, techniques and coping skills to succeed academically and socially in a traditional high school environment. R. 645.

31. Provident has identified the following as the hallmarks that define and distinguish its program:

- Implementation of multisensory instruction using derivatives of the Orton-Gillingham approach to language arts taught by Orton-Gillingham certified teachers.
- Individualization of instruction based on the student's developmental needs.
- Teaching students in small, flexible skill groups with targeted instruction available among eight tiers based on students' knowledge and skills at each level.
- Recognition of parents as partners in their children's education.
- Maintenance of an overall school average of a 6:1 student-to-adult ratio.
- Incorporation of project-based learning and development and implementation of interdisciplinary, theme-based units of instruction.
- Partnering with families in the development and delivery of education.
- Fostering self-discipline, self-respect and self-defense through a Martial Arts Tae Kwon Do program.
- Establishment of a fine arts program to include music, art and theater experiences.
- Implementation of conversational Spanish and the study of Latin to promote vocabulary development.
- Incorporation of assistive technology tools such as, but not limited to, Kurzweil Text-To-Speech Literacy Software, Dragon NaturallySpeaking Voice Recognition Software, as well as other instructional technology applications such as, but not

limited to, SMART Board's, SMART Interactive Solutions, and Microsoft Office and Internet application.

- Employment of a two-year teacher looping cycle in Levels 3-4 and 5-6 to promote stronger student/teacher bonding.
- Development of students' social consciousness through community service activities.
- Application of formative assessment techniques and provision of regular, consistent feedback to students and parents.
- Partnering with local universities to place student teachers including an incentive program.
- Addressing the needs of at-risk students defined as those who are at risk of educational failure because of academic difficulties such as, but not limited to, language processing and dyslexia.

R. 645-646, 656-689, 955-956.

32. The founding coalition, along with the Board of Directors, represents a cross-section of parents and professionals with an interest in serving the needs of children with dyslexia; and many are actively involved in organizations and agencies whose mission it is to work with families with children with dyslexia. R. 689-690, 898-899, 904-926.

33. Provident's founder, Curtis Kossman, is a successful businessman from the community who has dyslexia as do his two children. R. 920, 1725-1726.

34. At the December 16, 2013 public hearing, twenty (20) people spoke in favor of Provident, five (5) of whom were associated with Provident. R. 518-584.

35. In its Original Application, Provident submitted petitions of support with over 100 signatures from residents across the Pittsburgh region (R. 412-517) and 56 letters of support for a school that would meet the needs of children with dyslexia from parents (20), a student (1), and educators and other professionals (35). R. 348-411.
36. At the April 28, 2014 public hearing on the Revised Application, seven (7) people spoke in favor of Provident, three (3) having spoken at the December 16, 2013 public meeting. R. 1723-1748.
37. In its Revised Application, Provident submitted signatures from 115 individuals within the local Troy Hill community indicating support for the charter school either through signing a petition (102) or submitting a letter of support (14). R. 929-953, Supplement to the Record 1767.<sup>9</sup>
38. The Revised Application states that Provident intends to initiate partnerships with local, statewide and national organizations to promote best practices based on evidence, expertise and experience, and that it intends to identify business partners or community groups with which it can partner. R. 711, 970.
39. The Revised Application contains a revised admissions policy<sup>10</sup> which states, in relevant part:

All children are welcome to PCS.<sup>11</sup> Although PCS intends to actively market and serve children with dyslexia, other language-based disabilities

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<sup>9</sup> Other than the letter from the Board of Directors of the Troy Hill Citizens, Inc., the remaining 13 letters were form letters that spoke to supporting a charter school for children with dyslexia and having it located in the Troy Hill neighborhood. R. 941-953

<sup>10</sup> The admissions policy contained in the Original Application provided that only those children evaluated and diagnosed with dyslexia, which was to be determined by members of an admission committee after an in-person interview with the child, would be eligible for admission. R. 85-86.

<sup>11</sup> The reference "PCS" is used throughout Provident's Applications to refer to Provident Charter School.

and difficulty reading, PCS will have an open, nondiscriminatory admissions policy....

PCS will be open to all students on a space-as-available, first-come-first-served basis within each grade. PCS will not discriminate on any basis, including intellectual ability, measures of achievement or aptitude, athletic ability, disability, English language proficiency, race, creed, gender, sexual orientation, national origin, religion, or ancestry or other protected class.

There will be no admission requirements, and no tests of any sort will be given to determine whether admission is granted....

The nondiscriminatory policy delineated here will apply during the enrollment for the initial year of PCS's charter and for each subsequent year thereafter as PCS enrolls students in Kindergarten and in grades where seats are available....

R. 720-724.<sup>12</sup>

40. Admissions preferences will be given to all students who reside within the School

District, and preference will be given to students of parents/guardians who have been or will be actively involved with the development of Provident and to siblings of students already enrolled in Provident. R. 720.

41. Provident's enrollment requirements are listed as: (1) completing a pre-enrollment form;

(2) completing a student registration and enrollment form; and (3) participating in an orientation process. R. 720-722.

42. The pre-enrollment form requires contact information, the name and sex of the child, the

current school of enrollment, the date of birth, whether the parents/guardians have an interest in before/after care programs, the status of the application, transportation

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<sup>12</sup> The same admissions policy is found in the Record at R. 984-988. Reference will not be made to both cites.

information, the reason the parent/guardian has expressed an interest in the school, and “whether special programs are required.” R. 720.

43. The student registration and enrollment form requires contact and racial/ethnic information; the language(s) spoken in the home; the student’s first and second languages; whether the student has been in programs for special needs; whether the student has been previously expelled from school, referred to an alternative program for disciplinary reasons, or arrested, charged, convicted or pled guilty to a felony; and the previous public schools attended by state, county and year. R. 721.
44. Once a parent/guardian is offered admission for the child, he/she must participate in an orientation process to complete the enrollment process. R. 722.
45. Failure to timely participate in an orientation process and complete the enrollment process will result in the forfeiture of the position at the School. R. 722. The orientation process is not described in the Revised Application. R. *passim*.
46. Provident’s Revised Application outlines a lottery system to be utilized if the number of applications exceeds the capacity of the grade level or building. R. 721-722.
47. In a section in which Provident discusses parental choice and the least restrictive environment, the Revised Application states:

... Pennsylvania law permits charter schools to limit admission to students who are at risk of academic failure, which includes those students with identifiable disabilities or developmental delays. Consequently, providing parents with the choice of sending their child with dyslexia to a charter school whose mission is to provide an early, short-term, intensive, instructional program focused on the child’s specific needs in Levels 2 through 8 is reasonable and well-founded. For student with dyslexia, inclusion in a regular education program, excludes them from academic achievement and school success.

R. 685.

48. In the section in which Provident is asked to describe alternative placement procedures for students, including a description of alternative placement procedures for special needs students, the Revised Application contains the statement that

[a]ll PCS students will be special needs students. However, PCS does understand that the potential exists that some of the students it enrolls may ultimately require an alternative placement. PCS is committed to addressing the needs of all of its students and if an alternative placement is in the best interest of the student, it will be implemented in accordance with all required due process and the IEP and/or Section 504 requirements.

R. 734.

49. In the section in which Provident is asked to describe how the School plans to increase learning opportunities for every student of diverse backgrounds, including, but not limited to, students with disabilities and English Language Learners, the Revised Application contains the statement that

PCS is being specifically created to create innovative and researched-based learning options and opportunities for children with dyslexia. PCS will admit children with any type of disabilities on the same basis provided that they are diagnosed with dyslexia.

R. 841.

50. In the section in which Provident is asked to describe how the Charter School will meet the needs of at-risk students, the Revised Application states:

Students with dyslexia without the benefit of specific teaching and learning interventions are themselves at risk. Consequently, since PCS is dedicated to the service of children with dyslexia, students will benefit from after school and summer tutoring programs; use of assistive technology, services of instructional and therapeutic specialists and customized instructional programs....

R. 855.

51. In the Revised Application, Provident sets forth its discipline policy and expulsion criteria. R. 728-731.<sup>13</sup>
52. The Revised Application provides that the Head of School will investigate serious or repetitive behaviors and states that serious behaviors include but are not limited to arson, assault and battery, drug possession, trafficking and/or use, alcohol possession, sales and/or use, false firearms or bomb threats, firearms, dangerous weapons or dangerous instrument's possession, computer hacking, and school trespassing. R. 728.
53. After investigation, the Head of School is authorized to determine the consequences for such actions, including suspensions or expulsions. R. 729-730.
54. A suspension for up to 3 days requires that the Head of School sends written notice to the student's parent or guardian and to the Board setting forth the reason for the suspension and giving the student an opportunity to respond. R. 729-730.
55. Prior to assigning a suspension of more than 3, but less than 10, days, the Head of School will conduct an informal hearing during which the student is given the opportunity to be heard. The specific due process requirements for the informal hearing are set forth in detail in the Revised Application and include, *inter alia*, written notification to the parents/guardian and to the student of the reasons for the proposed suspension, sufficient notice of the time and place of the informal hearing, the student's right to question any witness present at the hearing, and the student's right to speak and to produce witnesses on his/her own behalf. R. 730.

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<sup>13</sup> The same suspension and expulsion criteria are found in the Record at R. 959-961. Reference will not be made to both cites.

56. Exclusions from school for more than 10 days are defined as expulsions which require a formal hearing before the Board, the committee of the Board, or hearing officer, and which require a majority vote of the entire Board for approval. The due process requirements for a formal hearing, as set forth in Chapter 12 of the Pa. Code, must be observed in expulsion hearings and are detailed in the Revised Application. R. 730.

57. The Revised Application includes documents related to Provident's proposed curriculum, including K-8 Curriculum Maps for English Language Arts and Mathematics, and links to numerous websites at which Provident states that other Curriculum Maps are posted. R. 993-1698.

58. The curriculum also incorporates teacher looping, parent engagement and community involvement, and further includes:

- Novel scheduling and use of instructional time, as well as an extended school day and extended school year;
- Needs-based and flexible skill groups which will provide for improved pupil learning opportunities for students;
- Use the Orton-Gillingham multisensory instruction across all subjects;
- Use of assistive technology to improve pupil learning and increase learning opportunities for students;
- Opportunities to participate in art, music, theater, and Tae Kwon Do.

R. 954-958, 993-1698.

59. The Revised Application provides that Provident will utilize the Universal Design for Learning (UDL) approach to designing curriculum. R. 682-684.

60. In its statement that it will provide a rigorous curriculum aligned to Pennsylvania State Standards and Common Core Standards, Provident also states that it will be "using developmentally appropriate instructional methods specifically designed for students with dyslexia." R. 994.



## CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter under the CSL. 24 P.S. §17-1717-A(f) and (i)(1).
  2. A local board of school directors shall evaluate a charter school application based on criteria including, but not limited to, the following:
    - (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held [pursuant to the CSL].
    - (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
    - (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A [of the CSL].
    - (iv) The extent to which the charter school may serve as a model for other public schools.
- 24 P.S. §17-1717-A(e)(2).
3. The local board of school directors must hold at least one public hearing, under the Sunshine Act,<sup>14</sup> on the provisions of the charter application. 24 P.S. §17-1717-A(d).
  4. The local board of school directors must take formal action approving or denying a charter at a public meeting pursuant to the Sunshine Act. 24 P.S. §17-1717-A(e)(4).

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<sup>14</sup>Act of July 3, 1986, P.L. 388, No. 84, *as amended*, 65 Pa.C.S.A. §701 *et seq.*

5. The local board of school directors must give the applicant written notice of the denial of a charter application which shall clearly state the grounds for the denial and include a description of deficiencies in the application. 24 P.S. §17-1717-A(e)(5).
6. The District Board complied with the procedural requirements of the CSL as set forth at section 1717-A, 24 P.S. §17-1717-A.
7. CAB applies a *de novo* standard of review to the District Board's determinations. 24 P.S. §17-1717-A(i)(6); *West Chester Area District Board v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).
8. When entertaining appeals from a local board of school directors' decision, CAB shall give due consideration to the findings of the local board of school directors while making an independent determination as to the merits, and shall specifically articulate reasons for agreeing or disagreeing with the local board of school directors. 24 P.S. §17-1717-A(i)(6); *West Chester Area District Board, supra*, 812 A.2d at 1180.
9. CAB is permitted to allow the charter school and/or the school district to supplement the record if the supplemental information was previously unavailable. 24 P.S. §17-1717-A(i)(6); *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400 (Pa. Cmwlth. 2003).
10. Provident has the burden of proving that all of the enumerated requirements for the contents of the charter school application were satisfied, including introducing sufficient evidence of "demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students." 24 P.S. §17-1717-A(e)(2)(i).

11. "Sustainable support" means support sufficient to sustain and maintain the proposed charter school as an ongoing entity. *In re Independence Charter School Initiative*, CAB Docket No. 2000-2 at 11.
12. Provident's Revised Application demonstrates sustainable support in the aggregate as required by section 1717-A(e)(2)(i). 24 P.S. §17-1717-A(e)(2)(i).
13. Provident's Revised Application demonstrates the capability of the charter application, in terms of support and planning, to provide comprehensive learning experiences to students. 24 P.S. § 17-1717-A(e)(2)(ii).
14. The legislative intent of the CSL is, *inter alia*, to improve pupil learning, increase learning opportunities for all pupils, encourage the use of different and innovative teaching methods, and provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. 24 P.S. §17-1702-A(1)-(3), (5).
15. Provident's Revised Application satisfies provisions of the legislative intent of the CSL, 24 P.S. §17-1702-A(1)-(3), (5), in that it would provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
16. Provident's Revised Application complies with the provisions of the CSL that require it to set forth the procedures which will be used regarding the suspension or expulsion of pupils. 24 P.S. §17-1719-A(7).
17. The CSL does not require that the applicant for a charter school include in its application actual agreements, contracts or memoranda of understanding with community members

or groups; rather, the CSL requires that the applicant set forth “[i]nformation on the manner in which community groups will be involved in the charter school planning process.” 24 P.S. §17-1719-A(8).

18. Provident’s Revised Application provides sufficient information on the manner in which community groups will be involved in the charter school planning process as required by section 1719-A(8). 24 P.S. §17-1719-A(8).
19. Provident’s Revised Application provides sufficient information to determine that it is prepared to meet the needs of all students in its educational programming, staffing, and curriculum.
20. The CSL requires that a charter school application include the applicant’s admission policy and criteria for evaluating the admission of students which shall comply with the requirements of section 1723-A, 24 P.S. §17-1723-A. 24 P.S. §17-1719-A(6).
21. All resident children in this Commonwealth qualify for admission to a charter school within the provisions of subsection (b) of Section 1723-A. 24 P.S. §17-1723-A(a).
22. A charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, except as provided in paragraph (b)(2), or athletic ability, measures of achievement or aptitude, status as a person with a disability, proficiency in the English language or any other basis that would be illegal if used by a school district. 24 P.S. §17-1723-A(b)(1).
23. A charter school shall not unlawfully discriminate in admissions, hiring or operation. 24 P.S. §17-1715-A(3).

24. The admissions policy contained in Provident's Revised Application does not violate the CSL. 24 P.S. §17-1723-A(b)(1).
25. The Revised Application provides sufficient information regarding the curriculum being offered and the methods of assessing whether students are meeting educational goals as required by Section 17-1719-A(5). 24 P.S. §17-1719-A(5).
26. Provident's Revised Application complies with the CSL requirement that it provide information as to whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district in accordance with Section 17-1719-A(14). 24 P.S. §17-1719-A(14).
27. The Revised Application met all of the requirements of the CSL.

## DISCUSSION

### I. STANDARD OF REVIEW

The CSL provides:

In any appeal, the decision made by the local board of directors shall be reviewed by [CAB] on the record as certified by the local board of directors. [CAB] shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.

24 P.S. §17-1717-A(i)(6).

CAB applies a *de novo* standard of review when entertaining appeals from a District Board's denial of a charter school application under section 1717-A(i)(6), 24 P.S. §17-1717-A(i)(6). *West Chester Area District Board v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). That means CAB considers the findings of the District Board, articulates its agreement or disagreement with those findings, and makes an independent determination as to the merits of the application. *Id.*, 812 A.2d at 1179 n.9, 1180. In other words, while giving due consideration to the vote of the local board, CAB must independently review the record in accordance with the requirements of the CSL and may substitute its own findings and independent judgment for that of the local board.

Section 1717-A(e)(2) of the CSL provides that an application is to be evaluated based on criteria including, but not limited to, the following:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held [pursuant to the CSL].
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.

- (iii) The extent to which the application considers the information requested in section 1719-A<sup>15</sup> and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

### III. GROUNDS FOR DENIAL OF THE APPLICATION

The District Board's May 1, 2014 denial letter of the Revised Application set forth the following deficiencies as grounds in support of its actions:

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<sup>15</sup> Section 1719-A of the CSL provides:

An application to establish a charter school shall include all of the following information:

- (1) The identification of the charter applicant.
- (2) The name of the proposed charter school.
- (3) The grade or age levels served by the school.
- (4) The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the Board of Trustees.
- (5) The mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.
- (6) The admission policy and criteria for evaluating the admission of students which shall comply with the requirements of section 1723-A.
- (7) Procedures which will be used regarding the suspension or expulsion of pupils. Said procedures shall comply with section 1318.
- (8) Information on the manner in which community groups will be involved in the charter school planning process.
- (9) The financial plan for the charter school and the provisions which will be made for auditing the school under section 437.
- (10) Procedures which shall be established to review complaints of parents regarding the operation of the charter school.
- (11) A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.
- (12) Information on the proposed school calendar for the charter school, including the length of the school day and the school year consistent with the provisions of section 1502.
- (13) The proposed faculty and a professional development plan for the faculty of a charter school.
- (14) Whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district.
- (15) A report of criminal history record, pursuant to section 111, for all individuals who shall have direct contact with students.
- (16) An official clearance statement regarding child injury or abuse from the Department of Public Welfare as required by 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools) for all individuals who shall have direct contact with students.
- (17) How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school.

24 P.S. §17-1719-A.

- A. Provident did not demonstrate sufficient sustainable support from residents within the District with most signatures on petitions and letters of support , being from persons outside the City of Pittsburgh School District;
- B. Provident does not provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system;
- C. Provident fails to set forth procedures regarding suspension or expulsion of pupils sufficient to comply with section 1318<sup>16</sup>;
- D. Provident fails to include sufficient information on the manner in which community groups will be involved in the charter school;
- E. Provident failed to demonstrate that it is prepared to meet the needs of all students;
- F. Provident's admissions policy is discriminatory and subjective in violation of 24 P.S. §17-1723-A(b)(1), 22 Pa. Code §711.7, and the Pennsylvania Fair Educational Opportunities Act;
- G. The curriculum included with the Revised Application is insufficient; and
- H. Provident's information regarding plans or agreements for extracurricular activities are insufficient.

R. 1761-1765.<sup>17</sup>

**A. Demonstrated, Sustainable Community Support**

The first factor to be considered is whether the applicant showed “demonstrated, sustainable support for the charter school plan by teachers, parents and community members and students....” 24 P.S. §17-1717-A(e)(2)(i). While the legislature has not defined what is meant by “community” or “community involvement,” CAB has concluded in past decisions that “sustainable support” means support sufficient to sustain and maintain the proposed charter

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<sup>16</sup> Section 1318 of the Public School Code, 24 P.S. §13-1318, generally authorizes school officials to discipline students for misbehavior at school.

<sup>17</sup> See Footnote 7, *supra*.



school as an ongoing entity. *In re Independence Charter School Initiative*, CAB Docket No. 2000-2 at 11.

The *Independence Charter School* decision also enunciated the following general principles for considering whether an applicant has the requisite support required by the CSL:

... the indicia of support are to be measured in the aggregate rather than by individual categories. The statutory listing of “teachers, parents, other community members and students” indicates the groups from which valid support for the charter school plan can be demonstrated. It does not appear that the General Assembly intended this list to be mutually exclusive or exhaustive. Failure to demonstrate strong support in any one category is not necessarily fatal to an application. *Nevertheless, a reasonable amount of support in the aggregate must be demonstrated.*

*Independence Charter School* at 11-12 (*emphasis supplied*).

In both the Original and Revised Application combined, Provident provided approximately sixty (60) letters of support for a charter school that would meet the needs of children with dyslexia. The Revised Application contains over 100 signatures on a petition from residents within a four-block radius of the proposed school which states that the petition is to support the establishment of Provident Charter School for Children with Dyslexia in Pittsburgh. At the first public hearing, twenty (20) people spoke in favor of Provident, five (5) of whom were associated with Provident. At the second public hearing on the Revised Application, seven (7) people spoke in favor of Provident, three (3) of whom had spoken at the first public meeting, and some of whom were associated with Provident. The District Board found that Provident did not demonstrate sufficient sustainable support for the proposed charter school. R. 1762.

After a review of the record, CAB disagrees with the District Board’s findings. Provident gathered support from parents, students, educators, and other professionals. Additionally, that support was shown through numerous signature petitions, letters of support, and at the public

hearings. Accordingly, the District Board's decision that Provident failed to demonstrate sustainable support is not supported by the record.

**B. Capability, in Terms of Support and Planning, to Provide Comprehensive Learning Experiences**

A charter school applicant must also demonstrate that it is capable of providing comprehensive learning experiences to students in accordance with section 1717-A(e)(2)(ii) of the CSL. CAB has held that "capability" suggests at least a minimum absolute threshold of acceptability, and that the applicant must be capable of delivering comprehensive learning experiences. *William Bradford Academy Charter School*, CAB Docket No. 1999-8. Although an applicant must offer something more than "general pronouncements" to explain how it will fulfill the required standards, the proposed curriculum has been described by CAB as "essentially a roadmap to the school's operation, goals, teaching strategies and learning methodology." *Thurgood Marshall Academy Charter School*, CAB Docket No. 2001-05; *see also Bear Creek Community Charter School*, CAB Docket No. 2003-02.

The District Board denied Provident's Revised Application finding that Provident failed to demonstrate that it is prepared to meet the needs of all students. R. 1764. The District Board recognized that the Revised Application contained a new admissions policy that would admit all students regardless of disability. The District Board found that despite the statement that teachers at Provident would be certified in the areas in which they teach, no changes were made to the staffing plan from the Original Application to the Revised Application in order to ensure this would occur. *Ibid.* Also, the District Board found that there was no written policy/procedure regarding Provident's Child Find obligations or how Child Find would be established, or how students would be screened. *Ibid.*

In response, Provident argues that it will meet the needs of all students. R. 971. It states that the CSL does not require it to include a written policy/procedure for Child Find or for screening students, and therefore, the lack of this information should not be used as a basis for denial of the Revised Application. Reply Brief, p. 7. It states that it has entered into numerous “assurances” that it will comply with all obligations under the charter school laws and all applicable laws, including special education; and since it is a school designed to educate students with disabilities, it will meet the needs of all students with disabilities. *Ibid.*

CAB disagrees with the District Board’s findings that failing to include a written policy/procedure for Child Find or for “screening students” renders the Revised Application deficient. Further, Provident has included additional information, such as transitioning students with disabilities and the ESL program that shows that it is prepared to meet the needs of potential new students, including students with disabilities and English language learners. Additionally, CAB finds that Provident’s Revised Application contains a sufficient proposed curriculum, as discussed in section C(v). As such, CAB disagrees with the District Board’s findings that Provident’s charter application failed to demonstrate how the school will provide comprehensive learning experiences to students.

**C. Extent to which the Application Considers the Information Requested in Section 1719-A and Conforms to the Legislative Intent Outlined in Section 1702-A**

*i. Expanded Choices and Educational Opportunities*

A charter school application is to be reviewed based on whether it conforms to the legislative intent outlined in Section 1702-A.<sup>18</sup> 24 P.S. §17-1717-A(e)(2)(iii). In particular, the

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<sup>18</sup> Section 1702-A of the CSL outlines the legislative intent and provides:

proposed charter school plan is required to detail how it will accomplish providing parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. Relevant to the District Board's action here is the General Assembly's intent that a charter school increase learning opportunities for all pupils, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, and provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. 24 P.S. §17-1702-A(1)-(3), (5).

Here, the District Board found that Provident did not provide parents and pupils with expanded choices and educational opportunities. Specifically, the District Board found that the expanded choices proposed by Provident, *e.g.*, teacher looping, extended school day, flexible skill groups, Orton-Gillingham multisensory instruction, assistive technology, using assessments for accountability, teachers with preparation and experience teaching students with dyslexia, inclusive practices, extended school year, expanded extracurricular choices, and teaching students self-advocacy, were all being currently provided within the District or other charter schools in the City of Pittsburgh, and therefore, denied the Revised Application on that basis. R. 1763.

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It is the intent of the General Assembly, in enacting this article, to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structured as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

24 P.S. §17-1702-A.

The existence of similar programs in a school district is not fatal to a charter school's application for a charter when there is evidence of uniqueness. *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 688 (Pa. Cmwlth. 2006). Even if it were true that the District provided all the educational choices proposed by Provident, the CSL does not require Provident to be more innovative or completely different from the District. "The purpose of the [CSL] is to encourage the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be." *Sugar Valley Rural Charter School*, CAB Docket No. 1999-4, p. 15.

Provident, *inter alia*, intends to implement multisensory instruction using derivatives of the Orton-Gillingham approach across all subjects taught by Orton-Gillingham certified teachers, provide individualized instruction based on the student's developmental needs, teach students in small flexible school groups with targeted instruction available among eight tiers based on a student's knowledge and skills at each level, recognize parents as partners in their children's education, maintain an overall school average of a 6:1 student to adult ratio, incorporate project-based learning, use teachers with preparation and experience teaching students with dyslexia, foster self-discipline, self-respect and self-defense through a Martial Arts Tae Kwon Do program, incorporate assistive technology tools, employ a two-year teacher looping cycle in Grades 3-4 and 5-6 to promote stronger student-teacher bonding, utilize an extended school day, employ a variety of assessments to ensure student academic growth and accountability, teach students self-advocacy, and provide options for an extended school year. R. 645-646, 656-689, 955-956.

The record supports Provident's descriptions of its educational methods and choices with regard to teacher looping, the extended school day and year, flexible skill grouping, and multisensory instruction based on the Orton-Gillingham method utilizing teachers certified in that approach. The Revised Application describes a learning environment that is unique and different from that in the District's public schools, particularly with respect to students with dyslexia and other language-based disabilities. The fact that the District has some programs for students with dyslexia utilizing methods similar to those outlined by Provident is irrelevant to the application review process. The record establishes that the educational program for students with dyslexia, as described by the Revised Application, is innovative and distinctive from the District. Therefore, CAB disagrees with the District Board's conclusion that the Revised Application does not provide parents and pupils with expanded choices in the educational opportunities available within the public school system.

*ii. Procedures Regarding the Suspension and Expulsion of Pupils*

A charter school application must also be reviewed to determine the extent to which the application considers the information requested in Section 1719-A of the CSL. 24 P.S. §17-1717-A. Section 1719-A(7) requires that the application include the procedures which will be used regarding the suspension or expulsion of pupils and that such procedures shall comply with section 1318.<sup>19</sup> 24 P.S. §17-1719-A(7). The District Board found that the Revised Application

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<sup>19</sup> Section 1318 provides:

Every principal or teacher in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct, and any principal or teacher suspending any pupil shall promptly notify the district superintendent or secretary of the board of school directors. The board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him. Such hearings, suspension, or expulsion may be delegated to a duly authorized committee of the board, or to a duly qualified hearing examiner, who need not be a member of the board, but whose adjudication must be approved by the board.

was deficient in that it did not clearly define these procedures or contain a student code of conduct. R. 1763.

In the Revised Application, Provident sets forth its discipline policy and expulsion criteria. R. 728-731, 959-961. The Revised Application provides that the Head of School will investigate serious or repetitive behaviors and states that serious behaviors include but are not limited to arson, assault and battery, drug possession, trafficking and/or use, alcohol possession, sales and/or use, false firearms or bomb threats, firearms, dangerous weapons or dangerous instrument's possession, computer hacking, and school trespassing. Thereafter, the Head of School is authorized to determine the consequences for such actions, including suspensions or expulsions. A suspension for up to 3 days requires that the Head of School send written notice to the student's parent or guardian and to the Board setting forth the reason for the suspension and giving the student an opportunity to respond. Prior to assigning a suspension of more than 3, but less than 10, days, the Head of School will conduct an informal hearing during which the student is given the opportunity to be heard. The specific due process requirements for the informal hearing include, *inter alia*, written notification to the parents/guardian and to the student of the reasons for the proposed suspension, sufficient notice of the time and place of the informal hearing, the student's right to question any witness present at the hearing, and the student's right to speak and to produce witnesses on his/her own behalf. Exclusions from school for more than 10 days are defined as expulsions which require a formal hearing before the Board, the committee of the Board, or hearing officer, and which require a majority vote of the entire Board for approval. The due process requirements of Chapter 12 of the Pa. Code are outlined as well.

Therefore, CAB disagrees with the District Board's finding that Provident's Revised Application did not set forth the procedures regarding the suspension or expulsion of pupils, as required by 24 P.S. §17-1719-A(7). *See McKeesport Area School Dist. v. Propel Charter School McKeesport*, 888 A.2d 912, 918-919 (Pa. Cmwlth. 2005) (holding similar provisions sufficient to comply with the CSL).

In addition, there is no requirement in the CSL that an applicant include a Code of Conduct in the charter school application. Therefore, Provident did not fail to comply with the CSL by not including one in its Revised Application. CAB rejects the District Board's finding that inclusion of a Code of Conduct is required.<sup>20</sup>

*iii. Community Groups Involvement in the Charter School Planning Process*

A charter school application must also contain information on the manner in which community groups will be involved in the charter school planning process. 24 P.S. §17-1719-A(8). The District Board contends that Provident failed to satisfy section 17-1719-A (8) because it failed to include information regarding partner collaboration in planning, operating and supporting the charter school. R. 1763. Specifically, the District Board states in its denial letter: "is not clear how/if community partnerships are integrated into the school and enhance and support the teaching and learning environments. No agreements, contracts or memoranda of understanding with community partnerships were submitted with the application." R. 1763.

After reviewing the record, CAB agrees with the District Board's conclusion that the Revised

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<sup>20</sup> The District correctly notes that the Revised Application provides that the Head of School, selected staff, and parents shall form a committee to establish a Code of Discipline. R. 728. In its Reply Brief, Provident asserts that the school administration, with the approval of the Board of Trustees, will complete a Code of Conduct prior to the commencement of school. Provident's Reply Brief, p. 13. Presumably Provident made this assertion understanding that the regulations require the Board to adopt the Code of Conduct, not the Head of School, as correctly pointed out by the District. *See* 22 Pa. Code §12.6(a).



Application fails to provide the information required; but CAB disagrees with what the District Board implies is required by the CSL to be in the charter application.

CAB disagrees that Provident had to include agreements, contracts or memoranda of understanding with community groups in order to satisfy this requirement of the CSL. The CSL does not require that the applicant for a charter school include such documents.<sup>21</sup> The CSL specifically provides that the applicant set forth “[i]nformation on the manner in which community groups will be involved in the charter school planning process.” 24 P.S. §17-1719-A(8).

Provident explains in its Revised Application that it intends to involve parents and guardians of prospective students in the development of Provident, that it intends to initiate partnerships with local, statewide and national organizations to promote best practices based on evidence, expertise and experience, and that it intends to identify business partners or community groups with which it can partner. R. 711, 970. Therefore, CAB finds that the Revised Application includes the information sufficient to satisfy the requirement of Section 17-1719-A(8).

*iv. Admission Policy and Criteria for Evaluating the Admission of Students*

Section 1723-A of the CSL provides that “[a] charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, except as provided in paragraph (2), or athletic ability, measures of achievement or aptitude, status as a person with a

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<sup>21</sup> If an applicant chooses to comply with this requirement by submitting such agreements, that is the applicant’s choice. However, such documents would still need to be reviewed to determine if they sufficiently set forth information on the manner in which the community group would be involved in the charter school planning process.

disability, proficiency in the English language or any other basis that would be illegal if used by a school district.” 24 P.S. §17-1723-A(b)(1).

In the Original Application, Provident proposed limiting admission to a targeted group of students with diagnosed dyslexia and included an admissions policy effectuating that policy, believing that by doing so it was in compliance with section 1723-A which permits a charter school to target at-risk students. R. 4; Provident’s Brief, p. 10. The District Board denied the Original Application, *inter alia*, because Provident was “discriminating” against students without dyslexia. R. 627-635.<sup>22</sup>

In its Revised Application, Provident changed its admission policy completely. R. 720-724. It now states, *inter alia*, that “all children are welcome,” that Provident “will not discriminate on any basis,” and that there “will be no admission requirements, and no tests of any sort will be given to determine whether admission is granted.”<sup>23</sup> R. 720. The District Board found that Provident’s admissions policy and criteria for evaluating the admissions of students contained in the Revised Application were discriminatory and subjective and were in violation of Section 17-1723-A(b)(1) of the CSL, 22 Pa. Code §711.7, and the Pennsylvania Fair Educational Opportunities Act. R. 1764. Additionally, the District Board found that Provident’s question on its pre-enrollment form of “whether special programs are required” was inappropriate and served no legitimate purpose at the pre-enrollment phase. R. 720, 1764.

Provident states that although it intends to actively market and serve children with dyslexia and other language-based disabilities, it has an open, nondiscriminatory admissions

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<sup>22</sup> This issue need not be addressed because the Revised Application contains an admissions policy that is open to all students, and not just students with dyslexia.

<sup>23</sup> Some of the provisions of the new admissions policy are set forth in Findings of Fact Nos. 42-49. The entire policy is found at R. 720-724.

policy and will be open to all students, regardless of the student's intellectual ability and mental aptitude, on a space-as-available, first-come-first-served basis within each grade. R. 720-724. Provident further asserts that it will not employ screening devices and will accept any student. Finally, Provident asserts that the question on its pre-enrollment form about "whether special programs are required" will not be used for screening or to exclude anyone; but rather the question is a mechanism through which the school will be able to obtain information about a child's needs so it will be prepared to address and work with the student's specific needs when the student attends.<sup>24</sup>

In *Central Dauphin School District v. Founding Coalition Infinity Charter School*, the Commonwealth Court upheld CAB's determination that a charter school may focus on or market to a specific group of students so long as the school has a nondiscriminatory admissions policy which is open to all. *Central Dauphin School District v. Founding Coalition Infinity Charter School*, 847 A.2d 195 (Pa. Cmwlth. 2004). As in *Infinity Charter School*, Provident has a nondiscrimination policy that would allow for the entry of students on a first-come, first-serve basis with a lottery in case there are more students than available seats. The fact that Provident may be better suited for students with dyslexia is inconsequential because that is not used as a basis for admission to the school.

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<sup>24</sup> In its brief, Provident argues that its primary objective is to provide an alternative educational opportunity for students with dyslexia, so it would not use the information it gathers to discriminate against or exclude students with disabilities. It claims the information is necessary in order to be better prepared to address and work with each student's specific educational needs. Because the information will not be used to determine eligibility of admission, CAB finds that gathering information in order to be better prepared for the student population is permissible. Provident's Brief, pp. 12-13.

v. *Sufficiency of the Curriculum*

Section 17-1719-A(5) provides that the application shall include the "... the curriculum to be offered and the methods of assessing whether students are meeting educational goals." 24 P.S. § 17-1719-A(5). The District Board found that the curriculum included in the Revised Application is insufficient. R. 1764.

The Revised Application includes various documents related to Provident's proposed curriculum, including K-8 Curriculum Maps for English Language Arts and Mathematics, which appear to be printouts of the modules from the Pennsylvania Department of Education, Standards Aligned System website. R. 1004-1698. Provident states in the Revised Application that it "will provide a rigorous curriculum, aligned to the Pennsylvania Academic Content Standards and the Standards Aligned system ... as well as the Common Core Standards..., for students in Levels 3 through 8...". Additionally, the Revised Application states that Provident will utilize the Universal Design for Learning (UDL) approach to designing curriculum. R. 682-684. In addition to course work and objectives, the curriculum incorporates teacher looping, parent engagement and community involvement, and further includes:

- Novel scheduling and use of instructional time, as well as an extended school day and extended school year
- Needs-based and flexible skill groups which will provide for improved pupil learning opportunities for students;
- Use of the Orton-Gillingham multisensory instruction across all subjects
- Use of Universal Design for Learning;
- Use of assistive technology to improve pupil learning and increase learning opportunities for students;
- Opportunities to participate in art, music, theater, and Tae Kwon Do

R. 954-958, 993-1698. After a review of the record, CAB disagrees with the District Board's finding that the curriculum included in the Revised Application was insufficient.

vi. *Agreements or Plans with School District Regarding Extracurricular Activities*

Section 17-1719-A(14) provides that the application shall include “[w]hether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district....” 24 P.S. §17-1719-A(14). The District Board found that Provident failed to satisfy Section 17-1719-A(14) because the Revised Application did not explain whether any agreements had been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities with the school district. R. 1765. The District Board misreads the requirements of this provision. This provision of the CSL does not *require* that the applicant enter into agreements or plans with the local school district regarding extracurricular activities in order to have its application approved; rather, it requires only that the applicant include information on *whether* any such agreements have been entered into or plans have been developed. Provident has done this.

Provident’s Revised Application stated that it has not entered into any agreements regarding extracurricular activities at the time of filing the Revised Application. R. 1699. This statement complies with the requirements of the CSL. Therefore, CAB disagrees with the District Board’s finding that the Revised Application failed to contain the information required by Section 17-1719-A(14).

## **CONCLUSION**

Based upon the foregoing analysis, the record does not support the District Board's reasons for denying Provident's Revised Application, as discussed above. Accordingly, the following Order will issue:

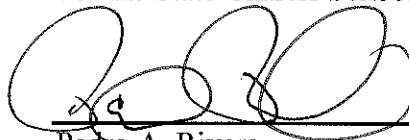
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
STATE CHARTER SCHOOL APPEAL BOARD

Provident Charter School for Children	:	
With Dyslexia,	:	
	:	
Petitioner,	:	
	:	
v.	:	CAB Docket No. 2014-06
	:	
Pittsburgh Public School District,	:	
	:	
Respondent.	:	

ORDER

AND NOW, this 17<sup>th</sup> day of March, 2015, based upon the foregoing and the vote of this Board,<sup>25</sup> the appeal of the Provident Charter School is **GRANTED**.

For the State Charter School Appeal Board



Pedro A. Rivera  
Chair

Date Mailed: 3/19/15

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<sup>25</sup> At the Board's meeting on February 18, 2015, the appeal was granted by a vote of 4 to 2, with Members Bracey, Cook, Miller, and Munger voting to grant, Members Peri and Yanyanin voting to deny, and Chair Rivera abstaining.



**PENNSYLVANIA DEPARTMENT OF EDUCATION**

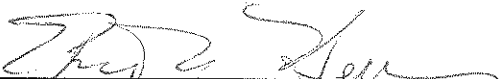
**REQUEST FOR SECRETARY OF EDUCATION'S SIGNATURE**

Name/Title of Originator: Alaina C. Koltash, Assistant Counsel  
Office of Chief Counsel and  
Counsel, Charter Appeal Board

Signature of Originator:   
Alaina C. Koltash

Description of Items to be Signed: **Opinion and Order in Provident Charter School  
For Children with Dyslexia v. Pittsburgh Public  
School District, CAB Docket No. 2014-06**

Date by which Signature is Required: As soon as possible

Signature of Approving Cabinet-Level Officer:   
Ernest N. Helling, Assistant Chief Counsel  
and Counsel, Charter Appeal Board